TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. ~~[illegible]~~ 296.

THE UNITED STATES, APPELLANT,

vs.

EDGAR M. WILSON, ADMINISTRATOR OF THOMAS B. VAN BUREN, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 26, 1897.

(16479.)

30
15
150
30

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 700.

THE UNITED STATES, APPELLANT,

vs.

EDGAR M. WILSON, ADMINISTRATOR OF THOMAS B. VAN BUREN, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Traverse	3	2
Amendment to petition filed May 5, 1890	4	2
Substitution of administrator	4	2
Amendment to petition filed March 27, 1894	5	3
Memoranda as to proceedings	6	3
Opinion	6	3
Order setting aside findings and conclusions of December 21, 1896, etc.	7	4
Findings of fact	8	5
Conclusion of law	9	6
Judgment	10	7
Application for and allowance of appeal	11	7
Clerk's certificate	12	7

1

In the Court of Claims.

THOS. B. VAN BUREN
vs.
THE UNITED STATES. } No. 16090.

I. *Petition. Filed March 30, 1888. J. R.*

The petition of Thomas B. Van Buren respectfully shows that he is a citizen of the United States and of the State of California, and that he is now a resident of San Francisco, which is his post-office address.

I.

That he was consul-general for the United States at Kanagawa, Japan, from June, 1874, until June, 1885.

II.

That during his term of service he collected in fees, which were erroneously credited to the Treasury, a large sum of money, viz, about $50,000, for certifying invoices for goods exported to the United States which were free of duty.

III.

Your petitioner further avers that said fees were paid to him by persons at whose request and for whose accommodation the service was performed. He relied on the good faith of the Government to restore whatever belonged to him.

IV.

Your petitioner further avers that he turned into the Treasury a large sum, viz, about $1,000, on account of extra or quadruplicate copies of invoices, and for invoices for goods in transit through the United States.

V.

Your petitioner further says that his accounts have been settled, but that he received no credit for the sums of money so erroneously credited to the Treasury.

2

VI.

Your petitioner prays that the facts relating to his claim may be investigated by this honorable court, and that judgment be given in his favor against the United States for the amount that may be found due to him.

VII.

Your petitioner further avers that he is the sole owner of the claims herein set forth; that no assignment of any interest in them has been

made, and that he is justly entitled to the relief herein claimed, and that the facts set forth in this petition are believed to be true.

THOS. B. VAN BUREN.
JNO. S. MOSBY,
Counsel for Petitioner.

Subscribed and sworn to before me this 23d day of March, 1888.

OGDEN HOFFMAN,
U. S. District Judge for Northern District California.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF CALIFORNIA, *ss:*

I, Southard Hoffman, clerk of the district court of the United States for the northern district of California, do hereby certify that the Honorable Ogden Hoffman, whose name is subscribed to the preceding certificate, is the judge of the district court of the United States for the northern district of California, duly appointed and qualified, and that the signature of said judge to said certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this 23d day of March, A. D. 1888.

[SEAL.] SOUTHARD HOFFMAN,
Clerk U. S. District Court, Northern District of California.
By J. S. MANLEY,
Deputy Clerk.

3 II. *Traverse, filed April 3, 1888.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

J. E. DODGE,
Assistant Attorney-General.

4 III. *Amendment to petition, filed May 5, 1890.*

The claimant moves the court to be allowed to amend petition by inserting after word "duty," in section second of said petition, as follows: "And for certifying to invoice declaration for goods in transit through the United States to foreign countries."

JOHN S. MOSBY,
Atty. for Claimant's Estate.

Allowed.

WM. A. RICHARDSON,
Chief Justice.

MAY 5, 1890.

IV. *Substitution of administrator, May 12, 1890.*

Edgar M. Wilson, having filed a duly authenticated copy of the record of his appointment as administrator of Thomas B. Van Buren, deceased, with will annexed, hereby moves the court that this cause be proceeded with in his, said Wilson's, name as administrator aforesaid.

JOHN S. MOSBY, *Atty., &c.*

Allowed.

WILLIAM A. RICHARDSON,
Chief Justice.

MAY 12, 1890.

5 V. *Amendment to petition, filed March 27, 1894.*

The claimant moves the court to be allowed to amend his petition by adding after the word "and," in section four, the figures $4,322.50, so as to make the last portion of the sentence read, "and $4,322.50 for certifying invoices for goods in transit through the United States."

JOHN S. MOSBY,
Atty for Claimant.

Allowed.

WILLIAM A. RICHARDSON,
Chief Justice.

MARCH 27, 1894.

6 VI.

On the 15th day of June, 1896, the court ordered judgment to be entered in this cause in favor of the claimant, in the sum of four thousand three hundred and twenty-two dollars and fifty cents.

On the 11th day of August, 1896, the defendants filed their application for appeal.

On the 21st day of December, 1896, the court filed an order withdrawing former findings of fact, and thereupon filing new findings of fact and conclusion of law, nunc pro tunc as of June 15, 1896, and reaffirmed former judgment. The court also filed an opinion, to wit:

Opinion of the court.

DAVIS, J., delivered the opinion of the court:

While plaintiffs' intestate was consul-general in Japan, he certified invoices for goods intended at that time to be shipped through the United States to a foreign port. The fees for this service he would be entitled to retain as his personal emolument under the decision in Mosby's Case were nothing else developed as to the transaction. It appears, however, that some of the goods covered by these invoices were in fact stopped in transit while within the territorial jurisdiction of the United States, were entered for consumption within the United States, and did not in fact leave the United States. There is no intimation of any fraud, collusion, or bad faith in any of the transactions, nor is there reason to suspect either. The shipper, when he procured the certificates to the invoices,

intended that the goods should go beyond the United States. The certification, therefore, was an unofficial act, and the fee was the personal emolument of the consul-general. This court so decided in Mosby's Case, saying:

"The third item of charge in claim is for certifying invoices for goods in transit through the United States to other countries, $5,805.

"This amount was collected by claimant during the time he officiated as consul at Hongkong, and was paid into the Treasury. For the purpose of avoiding delay and annoyance the shippers of goods through the United States procured from the consul what is called 'transit invoices.' They are not the invoices referred to in the sections of the statute above quoted, but such invoices as accompanied goods in transit through the United States. The law did not require the consul to issue such certificates, and hence no provision was made for them either in the regulations of 1874 or 1881. Nor do the regulations of the Treasury Department require the consuls to perform any duty in relation to such goods." (Gen. Reg. Treas. Dept., 1884, p. 361; Mosby v. United States, 34 C. Cls. R., 13.)

7 The Supreme Court affirmed this court, saying—

"The item of $5,805, which was allowed, is covered by finding 9, and is for fees received for certificates of shipment of merchandise in transit through the United States to other countries. These were not the invoices referred to in sections 2853 and 2855 of the Revised Statutes, either as they originally stood or as they were amended by the act of June 10, 1880. The law did not require the consul to issue those certificates; no provision was made for a fee for them in the regulations of 1874, or in those of 1881; and it does not appear that the regulations of the Treasury Department required a consul to perform any duty in relation to such goods. This item was, therefore, properly allowed." (United States v. Mosby, 133 U. S. R., 285.)

There, therefore, is left for us but one point, viz, Was the character of the consul-general's fee determined by the facts existing at the time he performed the service and did he then become entitled to the fee, or was his right to the fee to be determined only after the goods had reached a final destination somewhere at some indefinite time and after an undetermined delay—that is, was the consul-general bound to follow these goods until they were actually consumed in Havana, Buenos Ayres, London, or St. Petersburg, or were his rights determined and his responsibilities ended when in good faith he certified the invoices and received his pay?

The statement of the proposition seems to us to carry its answer. When the invoices were certified, it was intended that the goods should go beyond the United States. That being so, the certification was unnecessary in law, the fee was unofficial, and the consul-general might retain it. The transaction was then complete and ended. Later we reach a new transaction absolutely disconnected from the first one; to this transaction the consul-general was not a party, and of it he had no knowledge. The owners of the goods stopped them in transit, and presumably paid the duties if there were any due. This was a transaction absolutely independent of the previous consular act performed in Japan, and could not revert to that act to change its character.

When the consul charged this fee, he was entitled to retain it, and the subsequent change of the shippers' plans should not retroact to divest him of his title to the fee. The defendants might by statute or regulation have required the shipper to pay as a condition to entry for consumption in the United States a fee equal to the consular fee for certifying the invoices, and thus have adequately protected themselves.

Former judgment affirmed.

VII. *Order of the court, filed January 18, 1897.*

It is ordered that the findings of fact and conclusion of law filed herein under date of December 21, 1896, be vacated and set aside, and that the findings of fact and conclusion of law now filed be filed nunc pro tunc as of June 15, 1896, the date of the original judgment herein.

BY THE COURT.

8 VIII. *Findings of fact and conclusion of law, filed as of June 15, 1896.*

This case having been reheard by the Court of Claims on defendant's motion, the court, upon the evidence and after argument of counsel on both sides, find the fact as follows:

I.

Thomas B. Van Buren, a citizen of the United States, was appointed consul-general of the United States at the port of Yokohama, Japan, and held office from June, 1874, until June, 1885.

May 7, 1885, Van Buren left Japan for the United States, and from May 8, 1885, to June 30, 1885 (both dates included), George E. Rice was in direct charge of the consulate-general, he being the vice consul-general.

II.

The claims presented in the petition for fees "for certifying invoices of goods exported to the United States which were free of duty," and for certifying "extra or quadruplicate copies of invoices," have been abandoned by the claimant, under the decision of the Supreme Court of the United States in the case of United States v. Mosby (133 U. S., 273).

III.

During his term of office Van Buren, while at Yokohama, and (during his absence on leave) the vice consul-general, received fees for certifying invoices of merchandise (at the rate of $2.50 for each invoice) shipped from said port of Yokohama in transit through the United States in bond to foreign countries, amounting to the sum of four thousand one hundred and fifteen dollars ($4,115), which fees were paid into the Treasury of the United States, under the rules, regulations, and requirements of the Departments of State and of the Treasury requiring fees to be so accounted for and paid to the United States.

The number of these invoices was 1,646. These invoices followed forms 138 or 139 of the Consular Regulations, except that after the word "America" in the last paragraphs of said forms the words "in transit for" were added, following which came the name of some foreign country which was to be reached by crossing the United States.

Of the merchandise so shipped that covered by 523 of said invoices was stopped in transit and entered for consumption in the United States without further consular certificate, and the declarations or invoices and certificates as hereinbefore described were accepted by the customs officers of the United States as sufficient. The fees collected for certifying these 523 invoices amounted to $1,307.50.

9 IV.

Van Buren's accounts for the fees hereinbefore described were settled at the Treasury Department, and in the settlement he was charged with said fees as for official fees.

It is not shown that the reason for paying said fees into the Treasury was to avoid a controversy with any Department of the Government, or that Van Buren made any demand to have the fees refunded to him or credited to him before said accounts were finally settled, or that before the final settlements of said accounts at the Treasury Department he made any objection or protest against said fees being charged to him as official fees.

V.

The merchandise described in 478 of said 1,646 invoices passed in transit through the United States to foreign countries and was exported from the United States. The fees collected for certifying these invoices amounted to $1,195.

As to 645 of said 1,646 invoices, it is not shown either that the merchandise described in the invoices was stopped in transit and entered for consumption in the United States, or that it passed in transit through the United States to a foreign country. The fees collected for certifying these invoices amounted to $1,612.50.

VI.

During his term of office, to wit, after March 31, 1881, and before May 7, 1885, the claimant's testator charged and collected fees at the rate of $2 each, certifying "quadruplicate or extra copies of invoices" of merchandise imported into and entered for consumption in the United States, no part of which sum has been accounted for or paid into the Treasury of the United States.

VII.

These fees were voluntarily paid by shippers, at whose solicitation the service was rendered, were collected in good faith, and credited by Van Buren to the Treasury.

Conclusion of law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover judgment in the sum of four thousand one hundred and fifteen dollars ($4,115).

10 IX. *Judgment of the court.*

EDGAR M. WILSON, ADMINISTRATOR OF Thomas B. Van Buren, dec'd, *vs.* THE UNITED STATES. } No. 16090.

At a Court of Claims held in the city of Washington, on the 18th day of January, A. D. 1897, it was ordered that the former findings of fact and conclusion of law filed herein be withdrawn, and the judgment heretofore entered be vacated and set aside. The court thereupon filed findings of fact and conclusion of law nunc pro tunc as of June 15, 1896, and judgment was ordered to be entered nunc pro tunc as of that date, as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said Edgar M. Wilson, as administrator of Thomas B. Van Buren, deceased, do have and recover of and from the United States the sum of four thousand one hundred and fifteen dollars ($4,115).

BY THE COURT.

11 X. *Application for and allowance of appeal.*

From the judgment rendered on January 18, 1897, in the above-entitled cause as of the 15th day of June, 1896, in favor of claimant, the defendants, by their Attorney-General, on the 18th day of January, 1897, make application for and give notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,
Asst. Attorney-General.

Filed January 18, 1897.

Mr. Assistant Attorney-General Dodge, for the defendants, presented in open court an application for the allowance of an appeal filed of this date, and it was ordered that the appeal be allowed as prayed for.

BY THE COURT.

JANUARY 18, 1897.

12 In the Court of Claims.

EDGAR M. WILSON, ADMINISTRATOR OF Thomas B. Van Buren, dec'd, *vs.* THE UNITED STATES. } No. 16090.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the

above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, the opinion of the court, the judgment of the court, the application of the defendants for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 25th day of January, A. D. 1897.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Case No. 16479. Term No. 700. The United States, appellant, vs. Edgar M. Wilson, administrator of Thomas B. Van Buren, deceased. Court of Claims. Filed January 28, 1897.